

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
JUNE 3, 2008**

ITEM 12

SUBJECT

RIALTO-AREA PERCHLORATE CONTAMINATION
SWRCB/OCC A-1824

DISCUSSION

The Board is being asked to adopt an interlocutory order, on its own motion, to review groundwater contamination in the vicinity of the City of Rialto.

POLICY ISSUE

This matter does not raise any policy issues. It is simply a procedural step to fully authorize an upcoming hearing by a hearing officer.

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

Yes - Santa Ana Regional Board had previously investigated the groundwater contamination.

**STAFF RECOMMENDATION or
ADVICE OF STAFF ACTION**

The Board should adopt the order.



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board



Arnold Schwarzenegger
Governor

Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.waterboards.ca.gov>

April 24, 2008

VIA CERTIFIED MAIL AND EMAIL

Peter R. Duchesneau, Esq.
Manatt, Phelps & Phillips LLC
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
pduchesneau@manatt.com

Philip C. Hunsucker, Esq.
Resolution Law Group, P.C.
3717 Mt. Diablo Blvd., Suite 200
Lafayette, CA 94549
phunsucker@reslawgrp.com

Robert D. Wyatt, Esq.
Allen Matkins Leck Gamble Mallory
& Natsis LLC
3 Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
rwyatt@allenmatkins.com

Jorge A. León, Esq.
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
P.O. Box 100
Sacramento, CA 95812-0100
jleon@waterboards.ca.gov

Scott A. Sommer, Esq.
Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, CA 94105-2228
scott.sommer@pillsburylaw.com

Dear Messrs. Duchesneau, Hunsucker, León, Sommer, and Wyatt:

BOARD MEETING NOTIFICATION SWRCB/OCC FILE A-1824

Enclosed is a copy of a proposed interlocutory order in the above-entitled matter. The State Water Resources Control Board (State Water Board) will consider this order at its meeting that will be held on *Tuesday, June 3, 2008* commencing at *10:00 a.m.* in the Coastal Hearing Room, Second Floor of the Cal/EPA Building, 1001 I Street, Sacramento, California.

You will separately receive an agenda notice for this meeting.

At the meeting, interested persons will be allowed to comment orally on the draft order, subject to the following time limits. The Emhart Entities, Goodrich Corporation, Pyro Spectaculars, Inc., the City of Rialto, and the Santa Ana Regional Water Quality Control Board will each be allowed five minutes for oral comment, with additional time if there are questions by the State Water Board members. Other interested persons will be allotted a lesser amount of time to address the State Water Board. At the meeting, the State Water Board may adopt the draft order as written or with revisions, it may decide not to adopt the order, or it may continue consideration until a later meeting.

California Environmental Protection Agency

All written and oral comments shall be based solely upon evidence already contained in the administrative record in this matter. Supplemental evidence will not be permitted. Written comments on the draft order must be received by **12:00 p.m., May 27, 2008**. Written comments may not include any attachments, but may refer to documents already in the record, by date, author, and subject matter. Please indicate in the subject line, comments to A-1824 — June 3, 2008 Board Meeting. Those comments must be addressed to:

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
(tel) 916-341-5600
(fax) 916-341-5620
(email) commentletters@waterboards.ca.gov

If there are any questions or comments, please contact Karen O'Haire, Senior Staff Counsel, in the Office of Chief Counsel, at (916) 341-5179 or email kohaire@waterboards.ca.gov.

Sincerely,



Michael A.M. Lauffer
Chief Counsel

Enclosure

cc: See next page

cc: James L. Meeder, Esq.
[via Certified mail & email]
Allen Matkins Leck Gamble Mallory
& Natsis LLC
3 Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
jmeeder@allenmatkins.com

Steven J. Elie, Esq.
[via Certified mail & email]
Barry C. Groveman, Esq.
[via Certified mail & email]
Musick, Peeler & Garrett LLP
One Wilshire Boulevard
Los Angeles, CA 90017
s.elie@mpglaw.com
bgroveman@earthlink.net

Mr. Bruce Amig **[via Certified mail & email]**
Goodrich Corporation
Four Coliseum Center
2730 W. Tyvola Road
Charlotte, NC 28217-4578
bruce.amig@goodrich.com

Erik S. Mroz, Esq.
[via Certified mail & email]
Resolution Law Group
21800 Oxnard Street, Suite 780
Woodland Hills, CA 91367
emroz@resolutionlawgroup.com

Martin N. Refkin, Esq.
[via Certified mail & email]
Gallagher & Gallagher, PC
1925 Century Park East, Suite 950
Los Angeles, California 90067
refkin@thegallaghergroup.com

Mr. Gerard Thibeault **[via Certified mail & email]**
Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main street, Suite 500
Riverside, CA 92501-3339

Ms. Ann Sturdivant **[via email only]**
Senior Engineering Geologist
Santa Ana Regional Water Quality
Control Board
3737 Main street, Suite 500
Riverside, CA 92501-3339

Mr. Kurt V. Berchtold **[via email only]**
Assistant Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main street, Suite 500
Riverside, CA 92501-3339

Erik Spiess, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812-0100

Mr. Robert Holub **[via email only]**
Supervising Water Resource Control Engineer
Santa Ana Regional Water Quality Control Board
3737 Main street, Suite 500
Riverside, CA 92501-3339

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2008 -

In the Matter of the Petition of the
RIALTO-AREA PERCHLORATE CONTAMINATION

SWRCB/OCC FILE A-1824

BY THE BOARD:

Since 2002, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) has been conducting an investigation of groundwater contamination in the area of the City of Rialto. A focus of the investigation has been facilities located on a 160-acre site in Rialto. The Santa Ana Water Board Executive Officer issued a Cleanup and Abatement Order (CAO) for the site on February 8, 2005.

The 2005 CAO and proposed amendments are the subject of challenges in petitions for State Water Board review, some of which were recently activated by various entities named by the Santa Ana Water Board as responsible parties. In light of the various objections and appeals, and the need to take action in an expeditious manner, the State Water Board, acting through its Executive Director, decided to review this matter on its own motion. The Acting Executive Director of the State Water Board, by letter dated February 5, 2007,¹ informed all parties that the State Water Board would hold a hearing on this matter at the earliest possible date. It is in the best interest of all participants and the public who reside in the Rialto area that the hearings pertaining to this matter proceed in a fair, expeditious, and cost-effective manner.

Review by the State Water Board on its own motion is authorized by Water Code section 13320. The authority to initiate own motion review is not a power the State Water Board reserved to itself, and may be exercised by the Executive Director pursuant to the board's general delegation. (State Water Board Res. No. 2002-0104.) It is the position of the State Water Board that no formal vote is required to authorize initiating own motion review.

¹ The Acting Executive Director at that time was Tom Howard. Subsequent to February 5, 2007, the board selected Dorothy Rice as Executive Director, and Mr. Howard returned to the position of Chief Deputy Director.

Nonetheless, in an abundance of caution and to avoid further litigation and uncertainty, the State Water Board is adopting this order prior to the evidentiary hearing.

The State Water Board ratifies the Acting Executive Director's February 5, 2007, decision to initiate own motion review and the selection of a hearing officer. The effective date for initiating own motion review is February 5, 2007.

The administrative record to date for SWRCB/OCC File No. A-1824 consists of the following items generated or received by the State Water Board since February 5, 2007: all notices, rulings, disclosures, and transcripts of conferences, along with the parties' and interested persons' submissions in conformance with hearing notices, as well as parties' objections and motions that are part of SWRCB/OCC File No. A-1824. No further materials shall be accepted, except in accordance with further orders of the hearing officer or the board.

In ratifying the February 5, 2007, initiation of own motion review, the State Water Board is not evaluating or endorsing rulings made to date by the hearing officer in SWRCB/OCC File No. A-1824. The full State Water Board's consideration of legal and factual issues will occur after the evidentiary hearing, as contemplated by Water Code section 183.

ORDER

IT IS HEREBY ORDERED that the State Water Board will review groundwater contamination in the area of the City of Rialto on its own motion. The scope of this review is the 160-acre site in Rialto, California and as further described in hearing notices issued for SWRCB/OCC File No. A-1824. The effective date of this own motion review is February 5, 2007.

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DRAFT

April 24, 2008

IT IS FURTHER ORDERED that this order ratifying own motion review is interim in nature and that no final action of the State Water Board will occur until after an evidentiary hearing and until after consideration of a draft order by the full State Water Board in conformance with Water Code section 183.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 3, 2008.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Jeanine Townsend
Clerk to the Board